

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Application of New Cingular Wireless PCS, LLC)	WT Docket No. 15-221
and NEP Cellcorp, Inc.)	
)	
For Consent To Assign Licenses)	

MEMORANDUM OPINION AND ORDER

Adopted: December 30, 2015

Released: December 30, 2015

By the Chief, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. In this Memorandum Opinion and Order, we consider the application of AT&T and NEP for Commission consent to the assignment from NEP to AT&T of one Lower 700 MHz B Block license and one PCS A Block license covering all or parts of three local market areas in New York and Pennsylvania. The Commission determined in the *Mobile Spectrum Holdings Report and Order* that increased aggregation of below-1-GHz spectrum would be treated as an “enhanced factor” under its case-by-case review of license transfers if post-transaction the acquiring entity would hold approximately one-third or more of the suitable and available spectrum below 1 GHz.¹ In the proposed transaction, AT&T would increase its spectrum holdings, and in particular, would hold post-transaction more than one-third of the currently suitable and available below-1-GHz spectrum in one of the three local market areas. After carefully evaluating the likely competitive effects of AT&T’s increased aggregation of below-1-GHz spectrum in the relevant local market area, as well as the other factors ordinarily considered in a case-by-case review, we find that the likelihood of competitive harm is low. Further, we find some public interest benefits are likely to be realized, such as increased network quality and a better consumer experience. Based on the record before us and our competitive review, we find that the proposed assignment of licenses would serve the public interest, convenience, and necessity, and therefore we approve the proposed assignment.

II. BACKGROUND AND PUBLIC INTEREST FRAMEWORK

2. *Description of the Applicants.* AT&T Inc. (together with its indirect and wholly-owned subsidiary, New Cingular Wireless PCS, LLC, “AT&T”), headquartered in Dallas, Texas, is a communications holding company that ranks among the leading providers of telecommunications services in the United States.² NEP Cellcorp, Inc. (“NEP,” and together with AT&T, the “Applicants”), a wholly-

¹ See Policies Regarding Mobile Spectrum Holdings; Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, WT Docket No. 12-269, GN Docket No. 12-268, *Report and Order*, 29 FCC Rcd 6133, 6238-40 ¶¶ 282-88 (2014) (“*Mobile Spectrum Holdings Report and Order*”), *recon. denied*, *Order on Reconsideration*, 30 FCC Rcd 8635 (2015).

² See AT&T Inc., SEC Form 10-K, at 1 (filed Feb. 20, 2015), available at http://www.sec.gov/Archives/edgar/data/732717/000073271715000016/ye14_10k.htm.

owned subsidiary of North-Eastern Pennsylvania Telephone Company, offers telecommunications services to its customers in North Eastern Pennsylvania.³

3. *Description of the Transaction.* On June 10, 2015, AT&T and NEP filed the Application pursuant to section 310(d) of the Communications Act of 1934, as amended (the “Act”),⁴ seeking Commission consent to assign one Personal Communications Service (“PCS”) A Block license and one Lower 700 MHz B Block license to AT&T.⁵ The subject licenses cover all or parts of three Cellular Market Areas (“CMAs”) in parts of New York and Pennsylvania.⁶ In the instant transaction, AT&T would be assigned 12 to 22 megahertz of spectrum in five counties covering all or parts of these three CMAs. Post-transaction, AT&T would hold 119 to 135 megahertz of spectrum in total, and in particular, it would increase its below-1-GHz spectrum holdings from 43 megahertz to 55 megahertz in CMA 122 (Binghamton, NY).⁷

4. *Standard of Review.* Pursuant to section 310(d) of the Act,⁸ we must determine whether the Applicants have demonstrated that the proposed assignment of licenses would serve the public interest, convenience, and necessity.⁹ In making this determination, we first assess whether the proposed transaction complies with the specific provisions of the Act,¹⁰ other applicable statutes, and the

³ See Response of NEP to the General Information Request Dated Oct. 2, 2015, WT Docket No. 15-221, at 3 (filed Oct. 16, 2015) (“NEP Information Request Response”); NEP website, available at <http://www.nep.net/index.php>.

⁴ 47 U.S.C. § 310(d).

⁵ See Application, Exhibit 1 – Description of Transaction and Public Interest Statement at 1 n.1 (“Public Interest Statement”). The Application was assigned ULS File No. 0006811616.

⁶ See Application, Exhibit 3 – Spectrum Aggregation. See also New Cingular Wireless PCS, LLC and NEP Cellcorp, Inc. Seek FCC Consent to the Assignment of a Lower 700 MHz B Block License and a Personal Communications Service License in New York and Pennsylvania, WT Docket No. 15-221, *Public Notice*, DA 15-1118, at 1 (WTB rel. Oct. 2, 2015) (“*Accepted for Filing Public Notice*”). Through the PCS license, AT&T would acquire 10 to 20 megahertz in three counties in parts of the three CMAs: CMA 56 (Northeast Pennsylvania), CMA 122 (Binghamton, NY), and CMA 616 (Pennsylvania 5 – Wayne). Through the Lower 700 MHz license, AT&T would acquire 12 megahertz of low-band spectrum in all three counties of Binghamton, NY.

⁷ See Application, Exhibit 3 – Spectrum Aggregation; *Accepted for Filing Public Notice* at 1-2. As set out in the docket, the Bureau accepted the Applications for filing and established a pleading cycle, released a public notice announcing that Numbering Resource Utilization and Forecast (“NRUF”) reports and local number portability (“LNP”) data would be placed into the record and adopted the associated protective order, adopted a protective order covering the submission of confidential and highly confidential information, and sent the Applicants information requests seeking further specific information relating to the proposed transaction.

⁸ 47 U.S.C. § 310(d).

⁹ See, e.g., Application of AT&T Mobility Spectrum LLC and Consolidated Telephone Company for Consent To Assign Licenses, WT Docket No. 14-254, *Memorandum Opinion and Order*, 30 FCC Rcd 9797, 9799-9800 ¶ 6 (WTB 2015) (“*AT&T-Consolidated Order*”); Applications of AT&T Inc., E.N.M.R. Telephone Cooperative, Plateau Telecommunications, Inc., New Mexico RSA 4 East Limited Partnership, and Texas RSA 3 Limited Partnership for Consent To Assign Licenses and Authorizations, WT Docket No. 14-144, *Memorandum Opinion and Order*, 30 FCC Rcd 5107, 5111 ¶ 8 (2015) (“*AT&T-Plateau Wireless Order*”); Applications of AT&T Inc., Leap Wireless International, Inc., Cricket License Co., LLC and Leap Licenseco, Inc. for Consent To Transfer Control and Assign Licenses and Authorizations, WT Docket No. 13-193, *Memorandum Opinion and Order*, 29 FCC Rcd 2735, 2741-42 ¶ 13 (WTB, IB 2014) (“*AT&T-Leap Order*”).

¹⁰ Section 310(d) requires that we consider the application as if the proposed assignee were applying for the licenses directly under section 308 of the Act. 47 U.S.C. §§ 308, 310(d). See, e.g., *AT&T-Consolidated Order*, 30 FCC Rcd at 9799-9800 ¶ 6, n.18; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5111 ¶ 8, n.27; *AT&T-Leap Order*, 29 FCC Rcd at 2741-42 ¶ 13, n.45.

Commission's rules.¹¹ If the proposed transaction does not violate a statute or rule, we next consider whether the proposed transaction could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Act or related statutes.¹² We then employ a balancing test weighing any potential public interest harms of the proposed transaction against any potential public interest benefits.¹³ The Applicants bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, would serve the public interest.¹⁴

5. Our competitive analysis, which forms an important part of the public interest evaluation, is informed by, but not limited to, traditional antitrust principles.¹⁵ The Commission and the Department of Justice ("DOJ") each have independent authority to examine the competitive impacts of proposed mergers and transactions involving transfers of Commission licenses, but the Commission's competitive analysis under the public interest standard is somewhat broader.¹⁶ The Commission's public interest authority enables us, where appropriate, to impose and enforce narrowly tailored, transaction-specific conditions that ensure that the public interest is served by the transaction.¹⁷ If we are unable to find that the proposed transaction serves the public interest for any reason or if the record presents a substantial and material question of fact, we must designate the application(s) for hearing.¹⁸

6. *Qualifications of the Applicants.* As a threshold matter, the Commission must determine whether the applicants to a proposed transaction meet the requisite qualifications requirements to hold and transfer licenses under section 310(d) and the Commission's rules.¹⁹ We note that no issues were raised with respect to the basic qualifications of NEP or AT&T, and in addition, AT&T previously and repeatedly has been found qualified to hold Commission licenses.²⁰ We therefore find there is no reason to reevaluate the requisite citizenship, character, financial, technical, or other basic qualifications under the Act and our rules, regulations, and policies, of NEP or AT&T.²¹

¹¹ See, e.g., *AT&T-Consolidated Order*, 30 FCC Rcd at 9799-9800 ¶ 6; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5111 ¶ 8; *AT&T-Leap Order*, 29 FCC Rcd at 2741-42 ¶ 13.

¹² See *id.*

¹³ See *id.*

¹⁴ See *id.*

¹⁵ See, e.g., *AT&T-Consolidated Order*, 30 FCC Rcd at 9800 ¶ 7; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5111-12 ¶ 9; *AT&T-Leap Order*, 29 FCC Rcd at 2742-43 ¶ 15.

¹⁶ See *id.*

¹⁷ See, e.g., *AT&T-Consolidated Order*, 30 FCC Rcd at 9800 ¶ 7; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5111-12 ¶ 9; *AT&T-Leap Order*, 29 FCC Rcd at 2743-44 ¶ 16.

¹⁸ 47 U.S.C. § 309(e); *AT&T-Consolidated Order*, 30 FCC Rcd at 9800 ¶ 7; see also *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5111-12 ¶ 9; *AT&T-Leap Order*, 29 FCC Rcd at 2743 ¶ 15; Application of EchoStar Communications Corp., General Motors Corp. and Hughes Electronics Corp., and EchoStar Communications Corp., CS Docket No. 01-348, *Hearing Designation Order*, 17 FCC Rcd 20559, 20574 ¶ 25 (2002).

¹⁹ See 47 U.S.C. § 310(d); 47 C.F.R. § 1.948; see also, e.g., Application of Hardy Cellular Telephone Company and McBride Spectrum Partners, LLC for Consent To Assign License, WT Docket No. 14-240, *Memorandum Opinion and Order*, 30 FCC Rcd 9899, 9902 ¶ 8 (WTB 2015) ("*USCC-McBride Order*"); *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5112 ¶ 10; *AT&T-Leap Order*, 29 FCC Rcd at 2744 ¶ 17.

²⁰ See, e.g., *AT&T-Consolidated Order*, 30 FCC Rcd at 9800 ¶ 8; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5112-13 ¶ 11; *AT&T-Leap Order*, 29 FCC Rcd at 2745 ¶ 19. See also Application for Assignment of Licenses from VoiceStream GSM License Company, LLC to Pine Cellular Phones, Inc., ULS File No. 0002303164 (filed Sept. 22, 2005).

²¹ See 47 U.S.C. § 310(d); 47 C.F.R. § 1.948.

III. POTENTIAL PUBLIC INTEREST HARMS

7. *Competitive Overview.* In its examination of a proposed transaction, the Commission evaluates the potential public interest harms and undertakes a case-by-case review of the competitive effects of any increase in market concentration or in spectrum holdings in the relevant markets.²² In the past, the Commission has used a two-part screen to help identify those markets that provide particular reason for further competitive analysis, but has not limited its consideration of potential competitive harms solely to markets identified by its screen if it encounters other factors that may bear on the public interest inquiry.²³ In the *Mobile Spectrum Holdings Report and Order*, the Commission found that it is in the public interest to continue to use its spectrum screen and case-by-case review,²⁴ and, in addition, to require that any increase in spectrum holdings of below 1 GHz be treated as an “enhanced factor” in its review if post-transaction the acquiring entity would hold approximately one-third or more of such spectrum.²⁵ The Commission stated that it anticipated “that any entity that would end up with more than one third of below-1-GHz spectrum as a result of a proposed transaction would facilitate our case-by-case review with a detailed demonstration regarding why the public interest benefits outweigh harms.”²⁶ The Commission further stated, however, that when the other factors ordinarily considered indicate a low potential for competitive or other public interest harm, the acquisition of below-1-GHz spectrum resulting in holdings of approximately one-third or more would not preclude a conclusion that a proposed transaction, on balance, furthers the public interest.²⁷

8. The Commission stated in the *Mobile Spectrum Holdings Report and Order* that low-band spectrum is less costly to deploy and provides higher quality coverage than higher-band spectrum,²⁸ and that the two leading nationwide service providers hold most of the low-band spectrum available today.²⁹ The Commission found that if they were to acquire all, or substantially all, of the remaining low-band spectrum, they would benefit, independently of any deployment, to the extent that rival service providers are denied its use.³⁰ As the Commission found, without access to this low-band spectrum, rival

²² See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5113 ¶ 12. See also *USCC-McBride Order*, 30 FCC Rcd at 9902-3 ¶ 9; *AT&T-Consolidated*, 30 FCC Rcd at 9800-1 ¶ 9; *AT&T-Leap Order*, 29 FCC Rcd at 2745 ¶ 20.

²³ See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5113 ¶ 12. See also *USCC-McBride Order*, 30 FCC Rcd at 9902-3 ¶ 9; *AT&T-Consolidated Order*, 30 FCC Rcd at 9800-1 ¶ 9; *AT&T-Leap Order*, 29 FCC Rcd at 2752 ¶ 39, 2753 ¶ 41, 2755-56 ¶ 47.

²⁴ See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6223-24 ¶ 231.

²⁵ See *id.*, 29 FCC Rcd at 6240 ¶¶ 286-88. See also, e.g., *USCC-McBride Order*, 30 FCC Rcd at 9902-3 ¶ 9; *AT&T-Consolidated Order*, 30 FCC Rcd at 9800-1 ¶ 9; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5108 ¶ 2.

²⁶ *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6240 ¶ 286. The Commission also set out a heightened standard of review for cases in which the proposed transaction would result in an entity that already holds approximately one-third or more of below-1-GHz spectrum in a market acquiring additional below-1-GHz spectrum in that market, especially with regard to paired low-band spectrum. In these cases, the Commission stated that the required demonstration of the potential public interest benefits of the proposed transaction would need to clearly outweigh the potential public interest harms associated with such additional concentration of below-1-GHz spectrum, irrespective of other factors. See *id.*, 29 FCC Rcd at 6240 ¶ 287. See also *Application of AT&T Mobility Spectrum LLC and Club 42CM Limited Partnership for Consent To Assign Licenses*, WT Docket No. 14-145, *Memorandum Opinion and Order*, FCC 15-150, at ¶ 7, ¶ 15, ¶ 37, ¶ 48, ¶ 51 (rel. Nov. 12, 2015) (“*AT&T-Club 42 Order*”); *USCC-McBride Order*, FCC Rcd at 9903 n.31; *AT&T-Consolidated Order*, 30 FCC Rcd at 9801 n.34; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5111 ¶ 8 n.31, 5113 ¶ 13, 5114 ¶ 15, 5123 ¶ 36 n.114, 5130 ¶ 56.

²⁷ See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6240 ¶ 286.

²⁸ See *id.*, 29 FCC Rcd at 6164 ¶ 60.

²⁹ See *id.*, 29 FCC Rcd at 6156-57 ¶ 46, 6164 ¶ 60.

³⁰ See *id.*, 29 FCC Rcd at 6164 ¶ 60.

service providers that may lack a mix of low-band and higher-band spectrum would be less able to provide a robust competitive alternative, and may not be able to quickly expand coverage or provide new services.³¹ We consider below whether there would be an increased likelihood as a result of the proposed transaction that rival service providers or potential entrants would be foreclosed from expanding capacity, deploying mobile broadband technologies, or entering the market, and whether rivals' costs would be increased to the extent that they would be less likely to be able to compete robustly.³²

A. Market Definitions

9. We begin our competitive analysis by determining the appropriate market definitions for the proposed transaction,³³ including a determination of the product market, the geographic market, the input market for spectrum suitable and available for the provision of mobile wireless services, and the market participants.

10. *Product and Geographic Markets.* Consistent with recent transaction orders, we find that the relevant product market is a combined "mobile telephony/broadband services" product market that comprises mobile voice and data services, including mobile voice and data services provided over advanced broadband wireless networks (mobile broadband services).³⁴ In addition, we find that the relevant geographic market is local.³⁵ The Applicants are seeking Commission approval of the proposed assignment of 12 to 22 megahertz of spectrum that covers five counties in all or parts of three local markets, accounting for less than one percent of the population of the United States.

11. *Input Market for Spectrum and Market Participants.* For our analysis, we include the spectrum bands, or portions thereof, found in recent Commission orders as the input market.³⁶ Similarly, we apply recent Commission precedent and consider facilities-based entities providing mobile telephony/broadband services using cellular, PCS, SMR, 700 MHz, AWS-1, BRS, WCS, AWS-4, H Block, EBS, and AWS-3 and 600 MHz spectrum (as both the latter become available) to be market participants.³⁷

B. Competitive Effects of the Proposed Transaction

12. *Initial Review.* As discussed above, to help identify those local markets in which competitive concerns are more likely, initially, we apply a two-part screen, and if the acquiring entity

³¹ See *id.*, 29 FCC Rcd at 6164-65 ¶¶ 60-61; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5113-14 ¶ 14. See also *USCC-McBride Order*, 30 FCC Rcd at 9903 ¶ 10; *AT&T-Consolidated Order*, 30 FCC Rcd at 9801-2 ¶ 10.

³² See, e.g., *USCC-McBride Order*, 30 FCC Rcd at 9903 ¶ 10; *AT&T-Consolidated Order*, 30 FCC Rcd at 9801-2 ¶ 10; Applications of AT&T Mobility Spectrum LLC and KanOkla Telephone Association, WT Docket No. 14-199, *Memorandum Opinion and Order*, 30 FCC Rcd 8555, 8559-60 ¶ 10 (WTB 2015) ("*AT&T-KanOkla Order*").

³³ See, e.g., *USCC-McBride Order*, 30 FCC Rcd at 9904 ¶ 11; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5115 ¶ 17; *AT&T-Leap Order*, 29 FCC Rcd at 2746 ¶ 22.

³⁴ See, e.g., *USCC-McBride Order*, 30 FCC Rcd at 9904 ¶ 12; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5115-16 ¶ 18; *AT&T-Leap Order*, 29 FCC Rcd at 2746 ¶ 23.

³⁵ The Commission has found that the relevant geographic markets for certain wireless transactions generally are local, but has held that a transaction's competitive effects should also be evaluated at the national level where a transaction exhibits certain national characteristics that provide cause for concern. See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5116 ¶ 19. See also *USCC-McBride Order*, 30 FCC Rcd at 9904 n.40; *AT&T-Consolidated Order*, 30 FCC Rcd at 9801-2 n.43; *AT&T-Leap Order*, 29 FCC Rcd at 2748 ¶ 27.

³⁶ See, e.g., *AT&T-Plateau Wireless*, 30 FCC Rcd at 5117 ¶ 22; *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6169-70 ¶¶ 70, 72. See also *USCC-McBride Order*, 30 FCC Rcd at 9904 ¶ 13; *AT&T-Consolidated Order*, 30 FCC Rcd at 9801-2 ¶ 13; *AT&T-Leap Order*, 29 FCC Rcd at 2749-50 ¶ 32.

³⁷ See, e.g., *USCC-McBride Order*, 30 FCC Rcd at 9904 ¶ 13; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5117 ¶ 23; *AT&T-Leap Order*, 29 FCC Rcd at 2751 ¶ 35.

would increase its below-1-GHz spectrum holdings to hold approximately one-third or more of such spectrum post-transaction, we apply enhanced factor review.³⁸ The first part of the screen is based on the size of the post-transaction Herfindahl-Hirschman Index (“HHI”) and the change in the HHI.³⁹ The second part of the screen, which is applied on a county-by-county basis, identifies local markets where an entity would hold approximately one-third or more of the total spectrum suitable and available for the provision of mobile telephony/broadband services, post-transaction.⁴⁰ In instances where an applicant is acquiring spectrum below 1 GHz, we also carefully examine the possible competitive effects resulting from an increase in below-1-GHz spectrum holdings that would be above the threshold identified in the *Mobile Spectrum Holdings Report and Order*.⁴¹

13. As the instant transaction does not result in the acquisition of wireless business units and customers, we do not apply the initial HHI screen. None of the markets trigger the total spectrum screen but in our review of the below-1-GHz spectrum holdings, we find that AT&T would hold more than one-third, or more than 45 megahertz, of the currently suitable and available below-1-GHz spectrum in all three counties of CMA 122 (Binghamton, NY). We therefore look more closely at the potential competitive effects that the proposed holdings may have.

14. *Record.* The Applicants argue that the proposed transaction would have no adverse competitive effects, as it would neither cause an overall aggregation of spectrum that would pose an anticompetitive risk nor reduce competition in a meaningful way,⁴² and that no subscriber transition issues are implicated as a result of the proposed transaction.⁴³ Further, the Applicants maintain that the proposed transaction will not lead to an increase in market concentration or decrease the number of entities providing service to customers in these markets.⁴⁴ No petitions to deny or comments were received.

15. *Market-Specific Review.* Generally, in undertaking our analysis, we consider various competitive variables that help to predict the likelihood of competitive harm post-transaction. These

³⁸ See, e.g., *AT&T-Club 42 Order*, FCC 15-150, at ¶ 23; *USCC-McBride Order*, 30 FCC Rcd at 9904-5 ¶ 15; *AT&T-KanOkla Order*, 30 FCC Rcd at 8561 ¶ 15; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5118 ¶ 24; *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6240 ¶ 286. The current total amount of below-1-GHz spectrum that is suitable and available is 134 megahertz, approximately one-third of which is 45 megahertz. See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6156-57, 6240 ¶ 46, ¶¶ 286-88. As with our application of the initial total spectrum screen, we evaluate increases in below-1-GHz spectrum concentration on a county-by-county basis. See, e.g., *USCC-McBride Order*, 30 FCC Rcd at 9904-5 n.45; *AT&T-KanOkla Order*, 30 FCC Rcd at 8561 n.48; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5121, 5123 ¶¶ 31, 35.

³⁹ See, e.g., *USCC-McBride Order*, 30 FCC Rcd at 9904-5 ¶ 15; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5118 ¶ 24; *AT&T-Leap Order*, 29 FCC Rcd at 2753 ¶ 41 n.140.

⁴⁰ See, e.g., *AT&T-Club 42 Order*, FCC 15-150, at ¶ 23; *USCC-McBride Order*, 30 FCC Rcd at 9904-5 ¶ 15; *AT&T-Consolidated Order*, 30 FCC Rcd at 9803 ¶ 15; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5118 ¶ 24.

⁴¹ See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6233 ¶ 267, 6240 ¶¶ 286-88. See also, e.g., *AT&T-Club 42 Order*, FCC 15-150, at ¶ 23; *USCC-McBride Order*, 30 FCC Rcd at 9904-5 ¶ 15; *AT&T-KanOkla Order*, 30 FCC Rcd at 8561 ¶ 15; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5118 ¶ 24.

⁴² See Public Interest Statement at 4. See also Response of AT&T to the General Information Request Dated Oct. 2, 2015, WT Docket No. 15-221, at 12-14 (filed Oct. 16, 2015) (“AT&T Information Request Response”).

⁴³ See Public Interest Statement at 6; NEP Information Request Response at 7-9, Exhibits 1 and 2; AT&T Information Request Response at 12-13. NEP’s subscribers would not be acquired by AT&T; rather, NEP’s customers were notified in June 2015 that they would be obliged to obtain a new wireless service provider and that NEP would exit the retail wireless service marketplace by Sept. 22, 2015. Further, subscribers were informed that AT&T would offer a special promotion for NEP Wireless customers that converted to AT&T service before Sept. 22, 2015. See NEP Information Request Response at 7-9, Exhibits 1 and 2.

⁴⁴ See NEP Information Request Response at 12-13.

competitive variables include, but are not limited to: the total number of rival service providers; the number of rival firms that can offer competitive service plans; the coverage by technology of the firms' respective networks; the rival firms' market shares; the combined entity's post-transaction market share and how that share changes as a result of the transaction; the amount of spectrum suitable for the provision of mobile telephony/broadband services controlled by the combined entity; and the spectrum holdings of each of the rival service providers.⁴⁵

16. Binghamton, NY is a non-rural market of approximately 295,000 people, with a population density of 144 people per square mile.⁴⁶ Three service providers have a significant market share: AT&T, Sprint, and Verizon Wireless each hold approximately [REDACTED] percent of the market. In addition, T-Mobile has some market presence, with a market share of approximately [REDACTED] percent. Post-transaction, AT&T would hold 125 to 135 megahertz of spectrum in this CMA, including 55 megahertz of spectrum below 1 GHz, while the other three nationwide service providers hold 40 to 211 megahertz of spectrum.⁴⁷ With respect to below-1-GHz spectrum, Verizon Wireless holds 47 megahertz, Sprint holds 14 megahertz, Cavalier Wireless holds 12 megahertz, and DISH holds 6 megahertz. In terms of population and land area coverage, two service providers have significant 3G and LTE coverage.⁴⁸ Specifically, AT&T covers approximately 100 percent of the population and 99 percent of the land area with its 3G network, while the comparable 3G network coverage percentages are approximately 95 percent and 87 percent for Verizon Wireless. Sprint covers approximately 68 percent of the population and 24 percent of the land area with its 3G network.⁴⁹ In addition, AT&T covers approximately 85 percent of the population and 60 percent of the land area with LTE, while the comparable LTE network coverage percentages are approximately 95 and 86 percent for Verizon Wireless.⁵⁰

17. We find notwithstanding the fact that AT&T would hold, as a result of the proposed transaction, more than one-third of the below-1-GHz spectrum in Binghamton, NY, that the likelihood of competitive harm is low, after evaluating the particular factors ordinarily considered.⁵¹ We note that two other service providers, Sprint and Verizon Wireless, have significant market shares, and T-Mobile has some market presence. While there is only one other service provider, Verizon Wireless, with significant

⁴⁵ We derive market shares and HHIs from our analysis of data compiled in our December 2014 NRUF and LNP database, network coverage from January 2015 Mosaik data and 2010 U.S. Census data, and spectrum holdings from our licensing databases and the Applications. We also utilized and analyzed additional data as provided by the Applicants through our information requests. *See, e.g., USCC-McBride Order*, 30 FCC Rcd at 9905 n.51; *AT&T-KanOkla Order*, 30 FCC Rcd at 8562 n.54; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5120 ¶ 29, n.98.

⁴⁶ The population density is measured by the number of people per square mile using Census 2010 data. Rural markets are generally characterized by fewer than 100 people per square mile. *See* Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies To Provide Spectrum-Based Services, WT Docket Nos. 02-381, 01-14, 03-202, *Report and Order and Further Notice of Proposed Rulemaking*, 19 FCC Rcd 19078, 19086-88 ¶¶ 10-12 (2004).

⁴⁷ In addition, DISH holds 50 megahertz of spectrum above 1 GHz, and MCG PCS holds 15 megahertz of spectrum above 1 GHz.

⁴⁸ It has previously been found that coverage of 70% or more of the population and 50% or more of the land area is presumptively sufficient for a service provider to have a competitive presence in the market. *See, e.g., USCC-McBride Order*, 30 FCC Rcd at 9906 n.54; *AT&T-KanOkla Order*, 30 FCC Rcd at 8562 n.59; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5121 n.102; *AT&T-Leap Order*, 29 FCC Rcd at 2770 n.279.

⁴⁹ T-Mobile covers approximately 49% of the population and 5% of the land area with its 3G network.

⁵⁰ Sprint covers approximately 58% of the population and 9% of the land area with its LTE network, while the comparable percentages are approximately 52% and 6% for T-Mobile.

⁵¹ *See* ¶ 15 *supra*. *See also, e.g., USCC-McBride Order*, 30 FCC Rcd at 9906-7 ¶¶ 19, 21; *AT&T-KanOkla Order*, 30 FCC Rcd at 8563 ¶ 19; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5123 ¶ 36.

3G and LTE population and land area coverage in this market, Sprint covers close to 70 percent of the population with 3G, and close to 60 percent of the population with LTE. Further, T-Mobile covers approximately 50 percent of the population with 3G and LTE, and could likely expand its market presence on a timely basis in response to any anticompetitive behavior. We further note that NEP is neither a significant service provider in terms of market share nor does it cover a significant percentage of the population or the land area of this market with 3G or better.⁵² In addition, other entities were actively solicited with respect to this business opportunity, so they had the opportunity to acquire this low-band spectrum on the secondary market.⁵³ We find that the acquisition of this spectrum by AT&T is unlikely to foreclose rival service providers from entering or expanding, or raise rivals' costs, and thus, the proposed transaction is unlikely to materially lessen the ability of rival service providers to effectively respond to any anticompetitive behavior on the part of AT&T in Binghamton, NY.

IV. POTENTIAL PUBLIC INTEREST BENEFITS

18. We next consider whether the proposed transaction is likely to generate verifiable, transaction-specific public interest benefits.⁵⁴ The Commission applies several criteria in deciding whether a claimed benefit should be considered and weighed against potential harms,⁵⁵ and applies a "sliding scale approach" to evaluating benefit claims.⁵⁶ Under this sliding scale approach, where potential harms appear "both substantial and likely, a demonstration of claimed benefits also must reveal a higher degree of magnitude and likelihood than we would otherwise demand."⁵⁷ Conversely, where potential harms appear less likely and less substantial, as is the case here, we will accept a lesser showing to approve the proposed transaction.⁵⁸

19. *Potential Benefits.* The Applicants, in their detailed demonstration of the claimed benefits, assert that the proposed transaction would enable AT&T to increase its system capacity to enhance existing services, better accommodate its overall growth, and facilitate the provision of additional products and services in the affected markets.⁵⁹ According to the Applicants, the additional spectrum would be used to deploy AT&T's 4G network using LTE technology and would increase network capacity to the benefit of AT&T's subscribers.⁶⁰ In particular, the Applicants maintain that the acquisition of this Lower 700 MHz B Block spectrum would allow AT&T to support a 10×10 megahertz

⁵² See n.43 *supra*. NEP contends that at the time of the comprehensive review, it served approximately [REDACTED]. See NEP Information Request Response at 4. NEP further claims that service to the small number of remaining customers [REDACTED] will continue through October 22, 2015, and each customer will be called to encourage timely transition to another service provider. See NEP Information Request Response at 8.

⁵³ NEP states that it engaged Media Venture Partners ("MVP") in June 2014 to assist NEP in marketing its wireless business. In response to our information request, NEP states that [REDACTED]. See NEP Information Request Response at 5-6. See also *AT&T-Club 42 Order*, FCC 15-150, at ¶ 38.

⁵⁴ See, e.g., *USCC-McBride Order*, 30 FCC Rcd at 9907-8 ¶ 22; *AT&T-Consolidated Order*, 30 FCC Rcd at 9805 ¶ 20; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5126 ¶ 43; *AT&T-Leap Order*, 29 FCC Rcd at 2792-93 ¶ 130.

⁵⁵ See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5126-27 ¶ 44. See also, e.g., *USCC-McBride Order*, 30 FCC Rcd at 9907-8 ¶ 22; *AT&T-Consolidated Order*, 30 FCC Rcd at 9805 ¶ 20; *AT&T-Leap Order*, 29 FCC Rcd at 2793-94 ¶ 132.

⁵⁶ See *id.*

⁵⁷ See, e.g., *USCC-McBride Order*, 30 FCC Rcd at 9907-8 ¶ 22; *AT&T-Consolidated Order*, 30 FCC Rcd at 9805 ¶ 20; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5126-27 ¶ 44.

⁵⁸ See, e.g., *USCC-McBride Order*, 30 FCC Rcd at 9907-8 ¶ 22; *AT&T-Consolidated Order*, 30 FCC Rcd at 9805 ¶ 20; *AT&T-KanOkla Order*, 30 FCC Rcd at 8563 ¶ 20.

⁵⁹ See Public Interest Statement at 3. See also AT&T Information Request Response at 9.

⁶⁰ See Public Interest Statement at 3. See also AT&T Information Request Response at 5-6, 13.

LTE deployment.⁶¹ AT&T asserts that the capacity of a 10×10 megahertz block is greater than the total capacity of two separate 5×5 megahertz blocks⁶² and contends that the wider bandwidth results in noticeably better performance for users than a deployment using two 5×5 megahertz blocks.⁶³

20. *Evaluation.* We have reviewed the Applicants' asserted benefits, as well as their responses to our requests for additional information and documents regarding the potential benefits of AT&T acquiring, in particular, the below-1-GHz spectrum at issue in Binghamton, NY. The record provides general support for the Applicants' contentions that the proposed transaction would result in some public interest benefits. Specifically, we anticipate that through the acquisition of this Lower 700 MHz spectrum, AT&T would be able to deploy a more robust LTE network in a relatively short period of time.⁶⁴ As we found in the *AT&T-Plateau Wireless Order* and the *AT&T-Club 42 Order*, customers are likely to benefit in the immediate future from access to improved LTE performance and a more robust network as a result of the instant transaction.⁶⁵

V. BALANCING THE POTENTIAL BENEFITS AND THE POTENTIAL HARMS

21. We have reviewed the Applicants' initial claims, as well as their responses to our requests for additional information and documents. After carefully evaluating the likely competitive effects of AT&T's increased aggregation of below-1-GHz spectrum, we find that the ability of rival service providers to offer a competitive response to any anticompetitive behavior on the part of AT&T is unlikely to be materially lessened in Binghamton, NY, the market to which we applied enhanced factor review. Further, we find that the record provides general support for the Applicants' claims of potential public interest benefits. Therefore, under our sliding scale approach, we find that the likelihood of harm is low and the potential public interest benefits outweigh the harms. As a result, based on the record before us and our competitive review, we find that the proposed assignment would serve the public interest, convenience, and necessity.

VI. ORDERING CLAUSES

22. ACCORDINGLY, having reviewed the Application and the record in this proceeding, IT IS ORDERED that, pursuant to sections 4(i) and (j), 303(r), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 303(r), 309, 310(d), the application for assignment of licenses held by NEP Cellcorp, Inc. to New Cingular Wireless PCS, LLC is GRANTED.

23. IT IS FURTHER ORDERED that this Order SHALL BE EFFECTIVE upon release. Petitions for reconsideration under section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, may be filed within thirty days of the date of release of this Memorandum Opinion and Order.

⁶¹ See Public Interest Statement at 3. See also AT&T Information Request Response 5.

⁶² See AT&T Information Request Response at 6-7. AT&T asserts that the 10 megahertz block would have approximately 10% more capacity than two 5 megahertz blocks. See *id.* at 6.

⁶³ See AT&T Information Request Response at 5-6. AT&T cites the 10×10 megahertz LTE's deployment's greater trunking and signaling efficiencies, maintaining that these improvements result in higher system capacity, greater spectral efficiency, and better user throughput than is possible over two separate 5×5 megahertz blocks. See AT&T Information Request Response at 4-8. See also AT&T Exhibits ATT-NEP000007 and ATT-NEP000049-ATT-NEP000050.

⁶⁴ As a result of a short-term spectrum manager lease with NEP, AT&T maintains that it has already deployed service on the NEP spectrum at numerous cell sites. Where AT&T has already deployed LTE on its 700 MHz spectrum in the Binghamton, NY market, and to the extent AT&T has not already deployed the NEP spectrum pursuant to the lease, AT&T expects to deploy the NEP spectrum within 60 to 90 days after closing. See AT&T Information Request Response at 8-9.

⁶⁵ See *AT&T-Club 42 Order*, FCC 15-150, at ¶¶ 46-47; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5129 ¶ 53. See also, e.g., *AT&T-Consolidated Order*, 30 FCC Rcd at 9805-6 ¶ 22; *AT&T-KanOkla Order*, 30 FCC Rcd at 8564 ¶ 22.

24. This action is taken under delegated authority pursuant to sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Roger C. Sherman
Chief
Wireless Telecommunications Bureau